UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte JASON R. WILCOX and PAVEL M. ROZALSKI

Appeal No. 2005-0674
Application No. 09/596,195

ON BRIEF

Before HAIRSTON, GROSS, and MACDONALD, ***Administrative Patent Judges***.

MACDONALD, ***Administrative Patent Judge***.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-21.

Invention

Appellants' invention relates to a method for inventory management of items (e.g., banner advertisements) and item slots (e.g., spaces available for showing advertisements). The method includes first constructing a number of item slot groups and a number of meta item slot groups. Each item slot group has a number of item slots, where each slot is initially unfilled and is able to be filled by an item. Each meta group encompasses one or more item slot groups, and has a number of item slots equal to the total number of item slots of its

consistent groups. For example, an item slot may be an available space on a web site that is able to display an ad. The method allocates each of a number of items of a first type over the item slots of the meta groups that are unfilled, by matching characteristics of the item to characteristics of the meta groups. For example, an item may be a banner ad, while an item of the first type may be a banner ad of a member of an advertising cooperative that is able to advertise on other web sites in exchange for allowing ads on its web site. The method next allocates each of a number of items of a second type over both the item slots of the meta groups as well as the groups that are unfilled, again by matching characteristics of the item to characteristics of the groups. For example, an item of the second type may be a banner ad of a sponsor that pays to advertise on web sites. Appellants' specification at page 2, line 7, through page 3, line 12.

Claim 8 is representative of the claimed invention and is reproduced as follows:

8. A computer-implemented method for allocating items to an available inventory of empty item slots, comprising the steps of:

determining a number of item slots available in an inventory that are empty, such that each item slot that is empty can be filled by either an item of a first type having a corresponding meta characteristic and no group characteristic, or an item of a second type having both a corresponding meta characteristic and a corresponding group characteristic, and wherein each item slot that is empty is filled by only a single item having the corresponding characteristic;

organizing the item slots that are empty into item slot groups, a different item slot group being constructed for each different group characteristic, such that each item slot that can be filled with an item having that group characteristic is included in that item slot group;

constructing a meta item slot group for each different meta characteristic that can be used to fill the item slots, each meta item slot group having a number of meta item slots equal to a total number of item slots that can be filled by items having that meta characteristic, each meta item slot being initially unfilled and able to be filled by an item having that meta characteristic;

allocating each of a plurality of items of a first type over the meta item slots of the meta item slot groups that are unfilled by matching meta characteristics of the first type of items to the meta item slots, such that the meta item slots are filled only by items of the first type having the same meta characteristic, and allocating an item of the first type to a meta item slot fills the meta item slot with the item;

allocating each of a plurality of items of a second type over the meta item slots of the meta item slot groups that are unfilled by items of the first type by matching characteristics of the second type of items to the characteristics of the meta item slot groups, such that the meta item slots are filled only by items of the second type having the same meta characteristics, and allocating an item of the second type to a meta item slot fills the meta item slot with the item, thereby determining a number of items of the second type required to fill all meta item slots unfilled by items of the first type;

for each item of the second type that is allocated to a meta item slot, also allocating that item of the second type to an item slot that is unfilled by matching characteristics of the item of the second type to the characteristics of the item slot groups, such that each item slot is filled only by items of the second type having the same group characteristics and the same meta characteristics, and allocating an item of the second type to an item slot fills the item slot with the item; and

for each item of the first type that is allocated to a meta item slot, also allocating that item of the first type to an item slot that is unfilled by an item of the second type by matching characteristics of the first type of items to characteristics of the item slots, such that each item slot is filled only by items of the first type having the same meta characteristic, and allocating an item of the first type to an item slot fills the item slot with the item, thereby allocating items to an available inventory of empty item slots.

References

The references relied on by the Examiner are as follows:

Brown et al. (Brown)	6,026,368	Feb. 15, 2000
Herz	6,029,195	Feb. 22, 2000
Conley, Jr. et al. (Conley)	6,434,745	Aug. 13, 2002 (Filed Sep. 15, 1999)

Rejections At Issue

Claims 8, 13, and 18-21 stand rejected under 35 U.S.C. § 103 as being obvious over the combination of Brown and Herz.

Claims 1-7, 9-12, and 14-17 stand rejected under 35 U.S.C. § 103 as being obvious over the combination of Brown and Herz and Conley.

Throughout our opinion, we make references to the Appellants' briefs, and to the Examiner's Answer for the respective details thereof.[1]

[1] Appellants filed an appeal brief on June 28, 2004. Appellants filed a reply brief on October 1, 2004. The Examiner mailed an Examiner's Answer on July 30, 2004.

OPINION

With full consideration being given to the subject matter on appeal, the Examiner's rejections and the arguments of the Appellants and the Examiner, for the reasons stated **infra**, we reverse the Examiner's rejection of claims 1-21 under 35 U.S.C. § 103. It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the invention as set forth in claims 1-21. Accordingly, we reverse. For purposes of our decision, we will treat claim 8 as a representative claim of claims 1-21.

Only those arguments actually made by Appellants have been considered in this decision. Arguments that Appellants could have made but chose not to make in the brief have not been considered. We deem such arguments to be waived by Appellants [see 37 CFR § 41.37(c)(1)(vii) effective September 13, 2004 replacing 37 CFR § 1.192(a)].

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of establishing a ***prima facie*** case of obviousness. ***In re Oetiker***, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). ***See also In re Piasecki***, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). The Examiner can satisfy this burden by showing that some objective teaching in the prior art or knowledge generally available to one of ordinary skill in the art suggests the claimed subject matter. ***In re Fine***, 837 F.2d 1071, 1074,

5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the Appellants. ***Oetiker***, 977 F.2d at 1445, 24 USPQ2d at 1444. ***See also Piasecki***, 745 F.2d at 1472, 223 USPQ at 788.

An obviousness analysis commences with a review and consideration of all the pertinent evidence and arguments. "In reviewing the [E]xaminer's decision on appeal, the Board must necessarily weigh all of the evidence and argument." ***Oetiker***, 977 F.2d at 1445, 24 USPQ2d at 1444. "[T]he Board must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the agency's conclusion." ***In re Lee***, 277 F.3d 1338, 1344, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002).

With respect to independent claim 8, Appellants argue at page 10 of the brief, "item slot groups (and meta item slot groups) . . . are not equivalent to either the play lists or priority queues disclosed by Brown." The Examiner rebuts this argument at page 19 of the answer, stating "the priority queue is synonymous with [a] predetermined number of empty slots that need to be filled." We find Appellants' argument persuasive.

To determine whether claim 8 is obvious over the references, we must first determine the scope of the claim. Appellants' specification at lines 11-13 of page 2 shows that it is desired to sell an inventory comprising available space for showing ads. Also, lines 20-21 of page 2 show that the present invention

manages an inventory of items, such as banner ads. Finally, line 4 of page 3, shows that the present invention allocates items to item slots.

Our reviewing court states in ***In re Zletz***, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) that "claims must be interpreted as broadly as their terms reasonably allow." Our reviewing court further states, "[t]he terms used in the claims bear a 'heavy presumption' that they mean what they say and have the ordinary meaning that would be attributed to those words by persons skilled in the relevant art." ***Texas Digital Sys. Inc v. Telegenix Inc.***, 308 F.3d 1193, 1202, 64 USPQ2d 1812, 1817 (Fed. Cir. 2002), ***cert. denied***, 538 U.S. 1058 (2003).

Upon our review of Appellants' specification, we fail to find a definition of the term "slot" that is different from the ordinary meaning. We find the ordinary meaning of the term "slot" is best found in the dictionary. We note that the definition most suitable for "slot" is "a time assigned on a schedule or agenda".[2] We further note that "a time" encompasses the banner ad example disclosed by Appellants. While Appellants discuss the placement location of the banner ad (202) at page 11, an artisan would instantly recognize that there is also a time component as to the display of the banner ad.

We appreciate the Examiners' position that "slot" is only a position in a priority queue. However, we find that the claim language requires more and the Examiner has failed to point out how the priority queue of Brown meets the

requirement of a time assigned in a schedule or agenda. Therefore, the Examiner has not met the initial burden of establishing a ***prima facie*** case of obviousness.

Conclusion

In view of the foregoing discussion, we have not sustained the rejection under 35 U.S.C. § 103 of claims 1-21.

REVERSED

KENNETH W. HAIRSTON)
Administrative Patent Judge)
)
ANITA PELLMAN GROSS) BOARD OF PATENT
Administrative Patent Judge) APPEALS AND
) INTERFERENCES
)
ALLEN R. MACDONALD)
Administrative Patent Judge)

ARM/lbg

[2] Dictionary.com. Copy provided to Appellants.

RYAN, MASON & LEWIS, LLP
1300 POST ROAD, SUITE 205
FAIRFIELD, CT 06430